

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JUSTIN REESE, STEVEN COX, MICAH  
WITTENBORN and SHELBY BALL, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

DYCOM INDUSTRIES, INC., a Florida  
corporation; PRINCE TELECOM, LLC, a  
Delaware limited liability company, f/k/a  
PRINCE TELECOM, INC.,

Defendants.

CLASS ACTION

NO. C09-0606 MJP

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT,  
DIRECTING ISSUANCE OF CLASS  
NOTICE, AND SCHEDULING  
FAIRNESS HEARING**

NOTE ON MOTION CALENDAR:  
Friday, January 8, 2010

WHEREAS, the parties have applied for an order preliminarily approving the settlement of this action as stated in the Stipulation of Settlement on file with the Court, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement of this class action and for dismissal of the action with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has read and considered the Stipulation of Settlement, the exhibits attached thereto, and the briefing submitted in support of preliminary approval of the settlement and is fully advised;

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. Unless otherwise provided herein, all capitalized terms in this order shall have  
3 the same meaning as set forth in the Stipulation of Settlement previously filed with this Court.

4 2. For purposes of settlement, the Court certifies this case as class action under  
5 Rule 23 and a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b). The  
6 Court likewise certifies the following Settlement Class for all claims: “All current and former  
7 employees of Prince who have worked as Installers in the State of Washington from May 1,  
8 2005 through December 18, 2009.

9 3. The Court preliminarily approves the Stipulation of Settlement and the terms set  
10 forth therein—including the relief afforded the Settlement Class, the enhancement awards to  
11 the Class Representatives, and the payment of attorneys’ fees and costs to Class Counsel  
12 (including costs for notice and claims administration)—as being fair, reasonable and adequate.  
13 The Stipulation of Settlement is the result of arm’s-length negotiations between experienced  
14 attorneys who are familiar with class action litigation in general and with the legal and factual  
15 issues of this case in particular.

16 4. The Court preliminarily approves The Garden City Group, Inc. as the Claims  
17 Administrator and preliminarily approves payment of the charges of the Claims Administrator  
18 pursuant to the terms of the Stipulation of Settlement.

19 5. For purposes of determining whether the settlement should be finally approved,  
20 a fairness hearing shall be held on **April 23, 2010**, at **9:00 a.m.** in the courtroom of the  
21 Honorable Marsha J. Pechman at the U.S. Courthouse, 700 Stewart Street, Seattle,  
22 Washington 98101. The Court will hear arguments concerning whether the proposed  
23 settlement on the terms and conditions provided for in the Stipulation of Settlement should be  
24 granted final approval by the Court as fair, reasonable and adequate.

25 6. The Court approves, as to form and content, the Notice of Proposed Class  
26 Action Settlement and Claim Form (the “Notice Packet”) attached to the Stipulation of

1 Settlement as Exhibits A and B. In addition, the Court finds that distribution of the Notice  
2 Packet substantially in the manner set forth in Paragraph 7 of this order will meet the  
3 requirements of due process and applicable law, will provide the best notice practicable under  
4 the circumstances, and shall constitute due and sufficient notice to all individuals entitled  
5 thereto.

6 7. The procedure for distributing the Notice Packet shall be as follows:

7 (a) Within fifteen (15) calendar days of the signing of the entry of this  
8 Order, Defendants shall produce a list to the Claims Administrator that contains the names,  
9 social security numbers, last known addresses, and dates of employment for every potential  
10 member of the Settlement Class. In conformance with Section 14(c) in the Stipulation of  
11 Settlement, the Claims Administrator shall then determine the estimated minimum gross  
12 awards to be paid to Class members, assuming for purposes of the preliminary determination  
13 that every Class member will submit a valid and timely claim.

14 (b) Within fifteen (15) calendar days of receiving the relevant Settlement  
15 Class Member information, the Claims Administrator shall mail a Notice Packet to each  
16 potential Settlement Class Member via first class mail. If a Notice Packet is returned as  
17 undeliverable with a forwarding address provided by the U.S. Postal Service, the Claims  
18 Administrator will promptly resend the Notice Packet to that forwarding address along with a  
19 brief letter stating that the recipient of the Notice Packet has an additional fifteen (15) days  
20 beyond the original deadline set forth on the Class Notice to submit a Claim Form. If a Notice  
21 Packet is returned undeliverable and without a forwarding address, the Claims Administrator  
22 will perform one skip trace only and will resend Notice Packets to those Settlement Class  
23 Members for whom new addresses are obtained along with a brief letter stating that the  
24 recipient of the Notice Packet has an additional fifteen (15) days beyond the original deadline  
25 set forth on the Class Notice to submit a Claim Form.

1 (c) The Claims Administrator shall also mail a Notice Packet to any  
2 Settlement Class Member who contacts the Claims Administrator and requests a Notice Packet.  
3 If the Claims Administrator determines that the Settlement Class Member's original Notice  
4 Packet was returned as undeliverable, the Claims Administrator will include with the remailed  
5 Notice Packet a brief letter stating that the recipient has an additional fifteen (15) days beyond  
6 the original deadline set forth on the Class Notice to submit a Claim Form.

7 (d) Notice under the Stipulation of Settlement is deemed complete upon the  
8 initial mailing of the Settlement Notices as set forth in Paragraph 6(b) of this order.

9 8. If the Court grants Final Approval, each member of the Settlement Class who  
10 submits a valid and timely Claim Form shall be entitled to receive a proportionate share of the  
11 NFV. To be considered timely, a Claim Form must be mailed to the Claims Administrator and  
12 postmarked no later than forty-five (45) days from the initial mailing of the Notice Packets or  
13 sixty (60) days if the member's Notice Packet was returned as undeliverable. Unless he has  
14 excluded himself from the settlement, any Class Member who fails to submit a valid and  
15 timely Claim Form will not receive a share of the Class Payment but will be bound  
16 nevertheless by the terms of the Stipulation of Settlement.

17 9. Members of the Settlement Class shall be entitled to opt out of the Class by  
18 submitting a written statement requesting exclusion from the Settlement via regular mail to the  
19 Claims Administrator within forty-five (45) days of the initial mailing of the Settlement  
20 Notices or 60 days if the member's Notice Packet was returned as undeliverable, as further  
21 provided below:

22 (a) The written request for exclusion must contain the full name, current  
23 home or mailing address and last four digits of the Social Security number of the person  
24 requesting exclusion, and it must include the statement "I wish to be excluded from the  
25 Settlement of the case entitled *Reese, et al. v. Dycom Industries, Inc. and Prince Telecom, LLC*,  
26

1 Case No. C09-0606 MJP.” The written request must be signed by the person requesting  
2 exclusion.

3 (b) The written request for exclusion must be mailed to the Claims  
4 Administrator must be postmarked on or before the deadline set forth in the Class Notice,  
5 though 15 days shall be added for any employee whose Notice Packet was originally returned  
6 as undeliverable.

7 10. Any Settlement Class Member may appear at the fairness hearing and show  
8 cause, if he or she has any, as to why the terms of the proposed Stipulation of Settlement  
9 should or should not be approved as fair, reasonable and adequate, or why a judgment should  
10 or should not be entered thereon; provided, however, that no Settlement Class Member or any  
11 other person shall be heard or entitled to contest the approval of the terms and conditions of  
12 the proposed Stipulation of Settlement or, if approved, the judgment to be entered thereon,  
13 unless that person has filed and served a valid and timely written objection. To be valid, the  
14 written objection must be signed and must set forth the Settlement Class Member’s address,  
15 telephone number, and the name of the litigation (*Reese et al. v. Dycom Industries, Inc. and*  
16 *Prince Telecom, LLC*, Case No. C09-0606 MJP). To be timely, the written objection must be  
17 filed with the Court and postmarked to Class Counsel and counsel for Defendants no later than  
18 thirty (30) days after the initial mailing of Notice to the Class. In order to be considered by the  
19 Court, the written objection must clearly explain why the Settlement Class Member objects to  
20 the proposed Settlement and must state whether the Settlement Class Member or someone on  
21 his or her behalf intends to appear at the fairness hearing. All timely objections shall be  
22 considered and ruled upon by the Court at the fairness hearing. Any Settlement Class Member  
23 who does not submit a valid and timely objection in the manner provided above shall be  
24 deemed to have waived such objection and shall forever be foreclosed from making any  
25 objection to the fairness or adequacy of the proposed Stipulation of Settlement, unless  
26 otherwise ordered by the Court.


1           11. All papers in support of final approval of the Stipulation of Settlement shall be  
2 filed and served no later than **April 19, 2010**.

3           12. At the fairness hearing, the Court shall determine whether the proposed  
4 Stipulation of Settlement shall be finally approved.

5           13. The Court reserves the right to adjourn the date of the fairness hearing without  
6 further notice to the Settlement Class Members and retains jurisdiction to consider all further  
7 applications arising out of or connected with the proposed Stipulation of Settlement.

8           14. If final approval does not occur, or if the Stipulation of Settlement is terminated  
9 or canceled pursuant to its terms, the Parties shall be deemed to have reverted to their  
10 respective status as of the date and time immediately prior to the execution of the Stipulation  
11 of Settlement, and the Stipulation of Settlement shall be deemed null and void, shall be of no  
12 force or effect whatsoever, and shall not be admitted, referred to or utilized by any Party for  
13 any purpose whatsoever.

14           DONE IN OPEN COURT this \_8th\_ day of \_\_\_\_January\_\_\_\_, 2010.

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18 Marsha J. Pechman  
19 United States District Judge  
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